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10
    Attorneys for Defendant
11 GROUPME, INC.

12   UNITED STATES DISTRICT COURT

13   NORTHERN DISTRICT OF CALIFORNIA

14   OAKLAND DIVISION

15 BRIAN GLAUSER, individually and on behalf   CASE NO. 4:11-cv-02584-PJH
    of a class of similarly situated individuals,
16
                        Plaintiffs,   **DECLARATION OF JOHN PIGNATA**
17   **IN SUPPORT OF DEFENDANT**
                    v.   **GROUPME, INC.'S MOTION FOR**
18   **SUMMARY JUDGMENT**
    TWILIO, INC., a Delaware corporation; and
19 GROUPME, INC., a Delaware corporation,

20   Defendants.

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DECLARATION OF JOHN PIGNATA IN SUPPORT OF
GROUPME'S MOTION FOR SUMMARY JUDGMENT

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<u>DECLARATION OF JOHN PIGNATA</u>

2   I, John Pignata, declare:

3   1.   I am the Director of Engineering of GroupMe, Inc. ("GroupMe"). I have personal

4   knowledge of the facts stated herein, or rely on GroupMe's business records, and can testify to such

5   facts if called upon to do so.

6   2.   I have worked for GroupMe since October 2011 as the Director of Engineering. In

7   my capacity as the Director of Engineering, I oversee all engineering at GroupMe, including all

8   changes to GroupMe's proprietary software. I also help operate GroupMe's software and its

9   service on a day-to-day basis, and take part in decisions regarding GroupMe's business operations.

10 As part of my duties and responsibilities, I am necessarily familiar with GroupMe's proprietary

11 software and service, and how GroupMe's service has functioned since I joined the company in

12 October 2011. I require this information, including knowledge of GroupMe's historical and present

13 capabilities, so I can manage and implement changes, if any, to GroupMe's software to better meet

14 the needs of GroupMe's users.

15   3.   In preparing this declaration, I have reviewed the concurrently filed declaration of

16 Steve Martocci, a founder of GroupMe. I have personal knowledge that paragraphs 9 through 29 in

17 Mr. Martocci's declaration accurately describe how GroupMe's service has worked since October

18 2011.

19   4.   On April 21, 2014, I retrieved the chat history of plaintiff Brian Glauser's "Poker"

20 group. The cell phone number Mr. Glauser alleges belongs to him is still associated with the

21 "Poker" group as of the date of this declaration. Mr. Glauser has not requested to be removed from

22 the group or to stop receiving messages from the group. The last message exchanged among the

23 "Poker" group members occurred on December 10, 2013.

24   5.   SMS messages have always been routed to "Poker" group members using long

25 code "804-742-4986." GroupMe obtained that number from Twilio, Inc. ("Twilio") on April 18,

26 2011, when ███████████ a registered GroupMe user, created the "Poker" group using GroupMe's

27 smartphone app. Through 2011, GroupMe used Twilio's application program interface ("API") to

28 route SMS messages to "Poker" group members using the long code "804-742-4986." Thereafter,

1

LOSANGELES 1048276 (2K)

1   the long code "804-742-4986" was migrated to an API provided by Bandwidth.com ("Bandwidth"),

2   and Bandwidth's API was used to route SMS messages to "Poker" group members. GroupMe has

3   used only APIs provided by Twilio and Bandwidth to route SMS messages to "Poker" group

4   members. A true and correct copy of the chat transcript of the "Poker" group since April 18, 2011,

5   is attached as Exhibit C.

6   6.   On April 20, 2014, I reviewed GroupMe's records of activity associated with the

7   phone number Mr. Glauser alleges he used when he received text messages as part of the "Poker"

8   group. GroupMe's records show Mr. Glauser's phone number has not been used to create a

9   GroupMe group, and it has not been added to, or participated in, any groups using GroupMe's

10 service, other than ▮▮▮▮▮▮▮▮ "Poker" group.

11   7.   I obtained information regarding the "Poker" group, long code "804-742-4986,"

12 and records of Mr. Glauser's use of GroupMe's free social text messaging service from GroupMe's

13 servers, which, in the regular course of GroupMe's business, store and retain data regarding use of

14 GroupMe's service by group creators and members. I regularly review this type of information

15 from GroupMe's servers so I can manage engineering and operation of GroupMe's software based

16 on use of the service.

17   I declare under penalty of perjury that the foregoing is true and correct under the laws of

18 the United States of America.

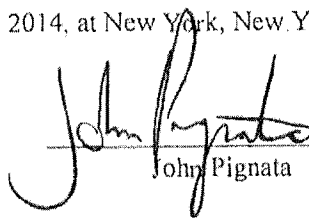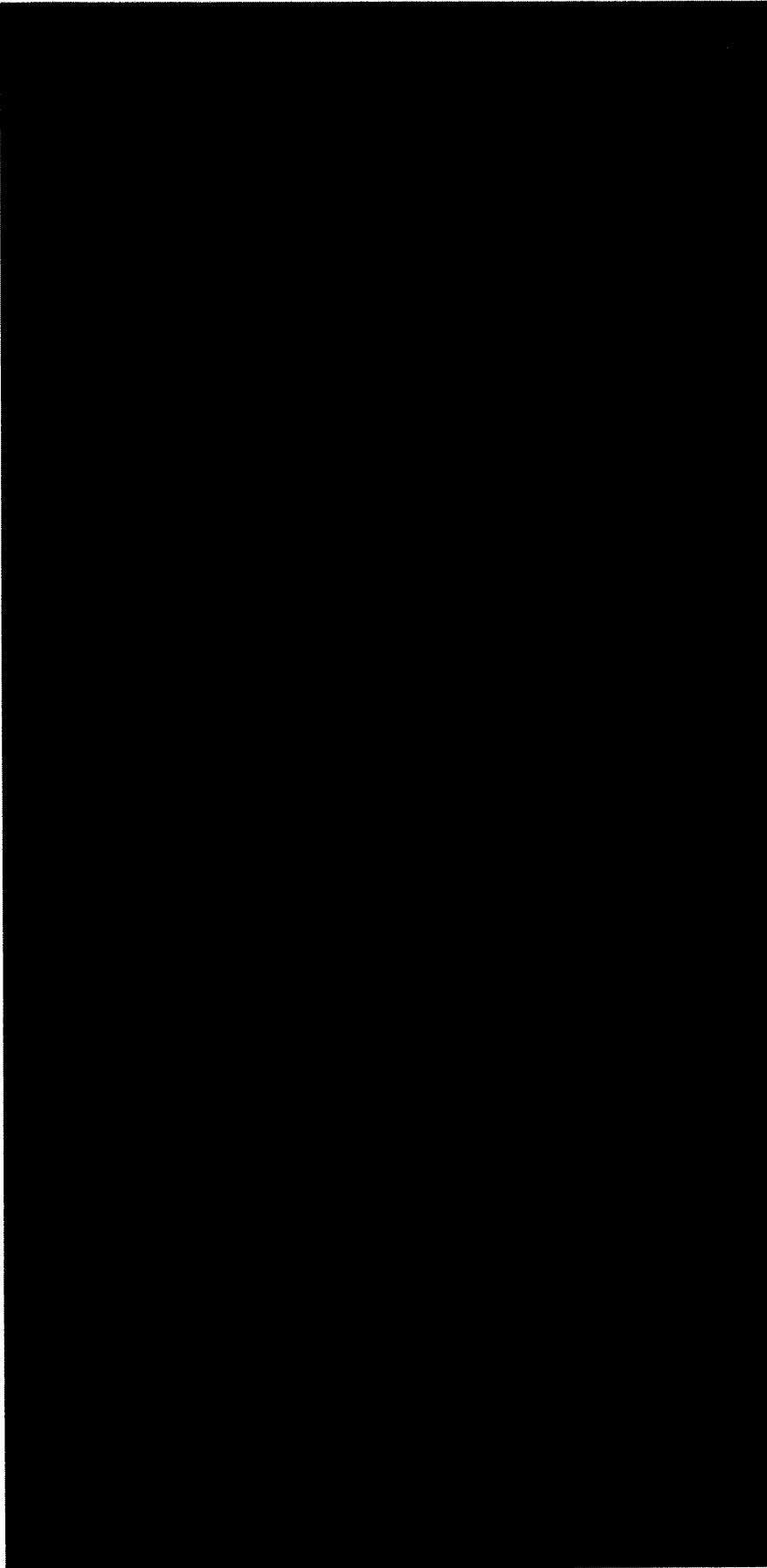19   Executed on this 28th day of April, 2014, at New York, New York.

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22   John Pignata

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EXHIBIT C

text	picture_url	timestamp
		2011-04-18 15:03:49 +0000
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		2011-04-23 16:28:35 +0000
		2011-04-23 16:53:39 +0000
		2011-04-23 16:54:21 +0000
		2011-04-23 16:55:06 +0000
		2011-04-23 16:55:30 +0000
		2011-04-23 16:55:55 +0000
		2011-04-23 17:15:09 +0000
		2011-04-23 17:19:11 +0000
		2011-04-23 17:28:08 +0000
		2011-04-23 17:29:02 +0000
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		2011-04-23 17:55:38 +0000
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		2011-04-23 20:26:10 +0000
		2011-04-23 20:49:23 +0000
		2011-05-08 03:03:42 +0000
		2011-05-14 16:04:23 +0000
		2011-05-14 16:06:29 +0000
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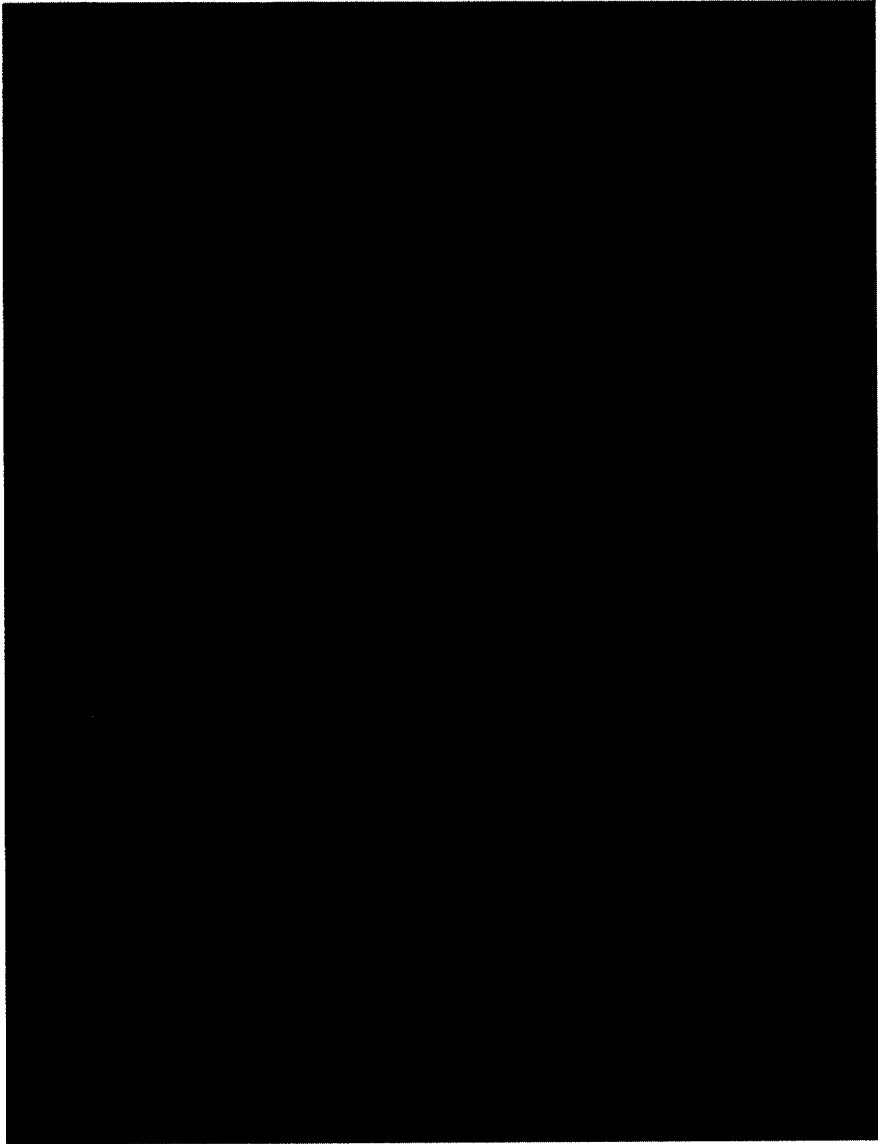2012-05-26 22:55:59 +0000
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